Privy Council in the case of *Lal Chand Marwari v. Mahant Ramrup Gir*[2]. In the course of the judgment in that case Lord Blanesburgh said :—

"But the law really is that on the facts now assumed there is no presumption as to Bhawan Gir being dead either in 1902 or 1904. There is only one presumption, and that is that when these suits were instituted in 1916 Bhawan Gir was no longer alive. There is no presumption at all as to when he died. That, like any other fact is a matter of proof. And their Lordships would here observe that it strikes them as not a little remarkable that the theory on this point, on which the plaintiff's pleader hazards his whole case, is still so widely held, although it has so often been shown to be mistaken .... Now upon this question there is, their Lordships are satisfied, no difference between the law of India as declared in the Evidence Act and the law of England and, searching for an explanation of this very persistent heresy, their Lordships find it in the words in which the rule both in India and in England is usually expressed."

His Lordship then quoted a passage from *In re Phene's Trusts*[3] and later said :—

"Probably the true rule would be less liable to be missed and would itself be stated more accurately, if instead of speaking of a person who had not been heard of for seven years, it described the period of disappearance as one 'of not less than seven years' ".

From this authority I think it is clear that no presumption arose as to when the first husband died but there might have been a presumption that at the date when these maintenance proceedings were commenced the husband was no longer alive, if it had been proved that he had not been heard of by those people who were likely to have heard from him had he been alive. Even this presumption, however, does not necessarily arise from the mere fact that the respondent had not heard from her former husband. There is no doubt that in the circumstances laid down in Section 108 of the Evidence Ordinance the Court may presume death but it does not follow that in every case it will do so. If the circumstances of a man's disappearance are such that it is unlikely that his relatives would have heard from him in any event then the Court will not presume his death (see *Watson v. England*[4], *Bowden v. Henderson*[5]). It appears to me that in circumstances in which the respondent's first husband left this country it is unlikely that he would have communicated either with his wife or her father. To paraphrase the judgment of the Vice Chancellor in *Watson v. England*[4] it is reasonable to presume that all along he has been concealing himself and that he never intended to return home. The mere fact of his not having been heard of since affords no inference of his death; for in the circumstances of the case it is very probable that he would never be heard of again by his relatives.

A suggestion was made in argument that some Hindu law or custom existed whereby a Hindu woman, whose husband had been absent from home for a period of years was at liberty to remarry. No evidence of any such law or custom was given by any witness competent to depose thereto. There was no evidence of the domicile of the respondent or of her first husband and, whether the custom relied upon was an Indian custom peculiar to Hindus in India or a local custom which the Courts would recognise or a matter of Hindu law, this would have to be properly proved by evidence, which was not done.

There are certain other points in the grounds of decision of the learned Magistrate upon which I think I ought to comment. In paragraph 6 of his grounds of judgment it is stated that the Court was satisfied that charges under the Married Women and Children (Maintenance) Ordinance, 1950 come under the category of criminal and not civil causes. This is clearly wrong. In the first place an application by a wife for maintenance is not a charge; and secondly, it was held in the case of *Stewart v. Stewart*[6] that such an application is a civil proceeding, and that an appeal therefrom is a civil appeal.

In paragraph 10 of his grounds of judgment the learned Magistrate makes reference to Section 494 of the Penal Code (which provides the punishment for bigamy) and to the exception thereto which makes it a defence for a wife to prove that at the time of the second marriage the husband had been continually absent from her for a space of seven years and had not been heard of by her as being alive within that time, provided she informs the person with whom a marriage is contracted of the real state of facts. I would point out, however, that the question of bigamy is quite irrelevant to the question of the validity of the marriage and the fact that the respondent might in this case have a complete defence to a charge of bigamy does not in any way validate the second marriage ceremony.

Whilst my sympathies in this case are entirely with the respondent, in my opinion, upon the facts adduced, she failed to prove that she was the wife of the appellant and therefore the learned Magistrate was wrong in making an order for maintenance in her favour.

I therefore allowed the appeal and set aside the learned Magistrate's order.

Solicitors : *Pillai, Lim, Lee & Hwang; Pillai & Eng Cheang.*

TEO SIEW JIN v. REGINA

[A. Cr. J. (Murray-Aynsley C.J.) February 23, 1955]

[Singapore — Magistrate's Appeal No. 255 of 1955]

Exchange Control Ordinance, 1953, s. 8, 5th Schedule Part II, para 1(2) & (4) — Placing to the credit of — Whether constitutes "payment".

The appellant in this case was charged on three counts for offences contrary to s. 8(c) of the Exchange Control Ordinance, to wit, that he on or about specified dates did "without the permission of the Controller of Foreign Exchange, place to the credit of Chop Huat, Bangkok, Thailand, a firm resident outside the scheduled territories" three specified sums of local currency. He pleaded guilty to each of the three charges. The learned District Judge holding that para 1(4) by which a fine might be imposed of three times the value of the currency, etc., in certain circumstances, applied to the case, convicted and sentenced the appellant to pay fines of $77,670.00, $60,000.00 and $10,927.90 respectively on each charge, and in default of payment six months imprisonment on each charge to run consecutively.

The appellant appealed against sentence, contending that the maximum fine which could be imposed in each case, under the provisions of para 1 of Part II of the 5th Schedule to the Exchange Control Ordinance was $10,000.00, and that in all circumstances, the fines imposed were excessive.

Held: placing a sum to the credit of a person may constitute a payment but it may not according to the circumstances. If it was sought to contend that the transactions in this case constituted payments the appellant should have been charged under s. 8(a). As this was not done para 1(4) did not apply, and fine was reduced to $10,000 in each case.

MAGISTRATE'S APPEAL.

Dr. C. H. Withers-Payne (*L. Rayner* with him) for the appellant.

H. B. Livingstone (Crown Counsel) for the respondent.

Cur. Adv. Vult.

Murray-Aynsley C.J. :—This is an appeal against sentence. The appellant was found guilty on his own confession of three offences against section 8(c) of the Exchange Control Ordinance, 1953, and was fined.

Section 8 reads as follows:—

"8. Except with the permission of the Controller, no person shall do any of the following things in the Colony, that is to say—

(a) make any payment to or for the credit of a person resident outside the scheduled territories: or

(b) make any payment to or for the credit of a person resident in the scheduled territories by order or on behalf of a person resident outside the scheduled territories; or

(c) place any sum to the credit of any person resident outside the scheduled territories:

Provided that where a person resident outside the scheduled territories has paid a sum in or towards the satisfaction of a debt due from him, paragraph (c) of this section shall not prohibit the acknowledgment or recording of the payment."

The penalties are set out in the Fifth Schedule Part II. By para. 1(2) the penalty is imprisonment for not more than two years or a fine not exceeding $10,000. But by para. 1(4) a fine may be imposed of three times the value of the currency, etc., in certain circumstances. These are where any person is convicted of an offence in relation to any currency, any security, and any payment, any gold, any goods or any other property. It is conceded that the relevant word in the present case is 'payment'.

It will be seen that (a) and (b) of section 8 deal with payments, (c) does not. Placing a sum to the credit of a person may constitute a payment but it may not according to the circumstances.

In spite of the heading to Part III of the Ordinance and in spite of the marginal note it is clear that the section includes other things besides payments.

If it was sought to contend that the present transactions constituted payments the appellant should have been charged under Section 8(a). This was not done and therefore para. 1(4) does not apply.

The fine is reduced to $10,000 in each case.

The alternative of six months imprisonment remains.

Order accordingly.

Solicitors for the appellant: *L. Rayner & Co.*

DEPUTY PUBLIC PROSECUTOR v. LIM PANG KIA

[A. Cr. J. (Murray-Aynsley C.J., Taylor & Knight JJ.) February 25, 1955]

[Singapore—Magistrate's Appeal No. 225 of 1954]

Exchange Control Ordinance, 1953—Controller—Powers of—Interpretation—Way of securing compliance.

The respondent in this appeal was charged with failure to comply with written directions given by the Ag. Deputy Controller of Foreign Exchange, in exercise of the powers conferred upon the Controller by para 1(1) of Part I of the 5th Schedule to the Exchange Control Ordinance, requiring him within 7 days of the receipt thereof to attend at the office of the Controller to give verbal information concerning certain transactions in gold and payments which might have been made in contravention of the provisions of the said Ordinance and concerning certain documents in connection therewith then in the possession of the Controller, and thereby committed an offence under para 1(1) Part II punishable under para 1(2) Part II of the said Schedule.

The respondent's only defence in the lower Court was that the notice was defective in form. The learned District Judge acquitting the respondent said that "the directions of the Controller should specify the information in the possession or control of the accused that the Controller required to be furnished. Otherwise how was one to know whether the Controller had exceeded his powers under para 1(1) Part I of the 5th Schedule of the Exchange Control Ordinance, 1953?"

On appeal by the Deputy Public Prosecutor,—

Held: (1) the interpretation by the learned District Judge involved adding something to the Schedule which has the effect of rendering it nugatory. If the Controller knew already he did not need to ask. As the notice followed the wording of the Schedule, it was in order; (2) although information could only be required to secure compliance with the regulations and to detect evasion, the powers of the Controller are not exhausted once the fact of an evasion had been discovered. The obtaining of evidence against persons guilty of offences